

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

**KIM R. WHITE**

Claimant

VS.

**CANTEEN CORPORATION**

Respondent

AND

**TRANSPORTATION INSURANCE CO.**

Insurance Carrier

AND

**KANSAS WORKERS COMPENSATION FUND**

**Docket No. 186,225**

**ORDER**

**On** the 21st day of April, 1994, the application of the respondent for review by the Workers Compensation Appeals Board of a preliminary hearing order entered by Administrative Law Judge Shannon S. Krysl on March 8, 1994, and a nunc pro tunc order dated March 10, 1994, came on for oral argument by telephone conference.

**APPEARANCES**

Claimant appeared by his attorney, Stephen Jones of Wichita, Kansas. Respondent and insurance carrier appeared by their attorney, Kim R. Martens of Wichita, Kansas. The Kansas Workers Compensation Fund appeared by its attorney, Steven Foulston of Wichita, Kansas. There were no other appearances.

**RECORD**

The record considered for purposes of this appeal consisted of the documents filed with the Division of Workers Compensation in this docketed matter, including the transcript of preliminary hearing held on March 8, 1994, before Administrative Law Judge Shannon S. Krysl, and the exhibits attached thereto.

### **ISSUES**

The Administrative Law Judge in her order found that the claimant had sustained a work-related injury while employed by the respondent and further found that claimant had established just cause for failing to give notice within 10 days from the alleged date of accident. Respondent was ordered to designate a physician for medical treatment and temporary total disability benefits were ordered if taken off work by the authorized physician.

Respondent appeals this order raising the following issues:

1. Whether claimant's alleged accidental injury arose out of and in the course of her employment with respondent.
2. Whether timely notice was given.

### **FINDINGS OF FACT & CONCLUSIONS OF LAW**

Based upon the evidence presented and for purposes of preliminary hearing, the Appeals Board finds as follows:

The Appeals Board has jurisdiction to review this preliminary hearing order as the foregoing issues raised by the respondent are issues, if disputed, that are set forth in K.S.A. 44-534a(a)(2), as issues which are to be considered jurisdictional and subject to review by the Appeals Board.

In the instant case, respondent first argues that the claimant has failed to sustain her burden of proof that she suffered a compensable work injury.

The Appeals Board, after reviewing the whole evidentiary record, disagrees with the respondent and affirms in all respects Administrative Law Judge Shannon S. Krysl's preliminary hearing order dated March 8, 1994, and nunc pro tunc order dated March 10, 1994.

The claimant has established through her testimony and medical records admitted into evidence at the preliminary hearing, that it is more probably true than not true that she suffered a repetitive trauma injury to her upper extremities while performing her work duties while employed by the respondent each and every day from October 4, 1993 through December 22, 1993.

Claimant testified that she started having problems with her hands and wrists approximately during the second week in December 1993. She had been employed with respondent since October 1993 as a cashier at the Boeing plant. She worked as a cashier for approximately two hours per day and the balance of her eight hour shift was spent performing other repetitive work with her hands such as wiping off tables, opening cans, cutting vegetables, doing dishes, lifting and carrying various items.

The last day that the claimant worked for the respondent was December 22, 1993, as the Boeing plant shuts down for Christmas vacation and the cafeteria staff is not scheduled to work. The claimant was scheduled to return to work on January 5, 1994, but

during this vacation, her arms, wrists and hands became more symptomatic. Her arms went numb from the shoulders down to her hands for a couple of days and the pain in her arms and fingers would not go away. She had previously experienced arm problems when she had worked for the Coleman Company and Wescon, a manufacturing plant. She felt that during this vacation time her symptoms would improve and she would be able to return to work on January 5, 1994. However, because of these increased symptoms she was unable to return to work.

Her supervisor, Kathy Lowrey, telephoned her on January 6, 1994, and she told Kathy that her hands were numb and she could not go to work. After she had the first telephone conversation with Kathy, the claimant called Dr. Murphy who had previously treated her and he indicated that her arm problems probably were work-related. She then had a second telephone conversation with Kathy and during that conversation she requested medical treatment. However, Kathy did not authorize such medical treatment and told her to call Georgie Engstand, a bookkeeper for respondent. Georgie also did not authorize medical treatment but did fill out an employee first report of injury worksheet, reporting the fact that the claimant had called her on January 6, 1994, reporting that both wrists began to bother her during the Christmas break.

Claimant finally sought medical treatment at the Hunter Health Clinic in Wichita on January 14, 1994. The clinical note indicates that she gave a history that for three to four weeks her arms had been going to sleep and joints hurt. She also indicated that she had gotten fired from her job due to her arm problems. The clinic prescribed some medication and told her to return, if she was not improving. On the date of the preliminary hearing, she had not returned and had not sought additional medical treatment because she had no insurance coverage and could not afford to pay for medical treatment.

The respondent also raises the issue that the claimant did not give the employer notice of accident within 10 days and the claimant also failed to establish that such failure was due to just cause. See K.S.A. 44-520.

Considering the whole record, the Appeals Board finds that the claimant notified the respondent on January 6, 1994, that she injured her bilateral upper extremities while she was performing her work duties for the respondent in December of 1993. Her last day worked was December 22, 1993, and therefore she did not notify the respondent within 10 days as provided by statute. However, even though she did not notify the respondent within 10 days, K.S.A. 44-520 provides that failure of notice is not a bar if just cause is shown for notice given within 75 days. The Appeals Board finds that there is just cause for notice not to be given until January 6, 1994, which is only 15 days after her last day worked, because the claimant was off work during the Christmas shutdown when her supervisors were not available to be notified of her increasing problem.

### **AWARD**

**WHEREFORE**, it is the finding, decision and order of the Appeals Board that the preliminary hearing order of Administrative Law Judge Shannon S. Krysl dated March 8, 1994, and nunc pro tunc order dated March 10, 1994, remain in full force and effect.

**IT IS SO ORDERED.**

Dated this \_\_\_\_\_ day of June, 1994.

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BOARD MEMBER

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- c: Stephen Jones, Attorney at Law, 1999 N. Amidon, Suite 340, Wichita, KS 67203  
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Shannon S. Krysl, Administrative Law Judge  
George Gomez, Workers Compensation Director